

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JAMES T. FISHER,)	
)	
Plaintiff)	
)	
vs.)	No. CIV-05-996-C
)	
BRAD HENRY, et al.,)	
)	
Defendants)	

ORDER AFFIRMING REPORT AND RECOMMENDATION

On September 30, 2005, Magistrate Judge Doyle W. Argo recommended that, because Plaintiff had not timely paid the initial partial filing fee, the action should be dismissed. Plaintiff timely filed his objection to the Report and Recommendation of Judge Argo, in which he simply incorporates the reasoning contained in his “Motion Out of Time and Brief in Support Demonstrating Good Cause for Failing September 21, 2005 Court Deadline for Initiating Partial Filing Fee.” In that pleading, Plaintiff merely states, in additional and more complete detail, what he alleges are constitutional violations on the part of the Oklahoma Department of Corrections and certain of its employees. The only reference made to his failure to pay the initial partial filing fee is that first, he has no memory after he received the order to pay as to what he could do to obtain the filing fee, and second that he has absolutely no financial support whatsoever. Nevertheless, in the certification of the institutional account, the appropriate officer certifies that this Plaintiff had an average of \$9.16 monthly

deposits to his account for the past six months. Plaintiff does not deny this statement; does not allege that he currently has no funds, and in the remaining pages of his pleading, makes no reference to his ability or inability to pay. Thus, he has not directly controverted any of the factual or legal findings contained in the Report and Recommendation.

There is nothing asserted by Plaintiff which would lead to a conclusion that the initial partial payment of \$1.83 is burdensome or impossible or that the provisions of 28 U.S.C. § 1915(b)(1) are inapplicable to him. However, given the allegations of Plaintiff's mental condition and the paucity of his institutional account, the Court will grant an additional thirty days within which the initial partial filing fee must be paid.

Accordingly, the Report and Recommendation of the Magistrate Judge is adopted; however, an additional thirty days will be granted within which Plaintiff must pay the initial partial filing fee of \$1.83 or this action will be dismissed.

IT IS SO ORDERED this 28th day of October, 2005.



ROBIN J. CAUTHRON
United States District Judge